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FILE Decision on Appeal
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Paper No. 4

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MAR 07 2002

OFFICE OF PETITIONS

In re Application of
DiCesare, et al
Application No. 09/887,703
Filed: March 29, 2001
Attorney Docket No. 03141-P0349A

DECISION GRANTING
PETITION

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This is a decision on the petition filed January 29, 2002 (certificate of mailing October 26, 2001) under 37 CFR 1.10(e), requesting that the above-identified application be accorded a filing date of March 29, 2001.

Petitioners request a March 29, 2001 filing date on the basis that the application was deposited in Express Mail service on March 29, 2001, pursuant to the requirements of 37 CFR 1.10. The petition is accompanied a complete copy of petitioners' file, including a fee transmittal form, 47 pages of specification, 6 pages of drawings, 2 pages of declaration, 2 pages of a patent assignment recordation form cover sheet, and 2 pages of an assignment. In addition, petitioner submitted a copy of Express Mail label EL574209483US showing an illegible date-in, a copy of check No. 042843 for \$750.00, a copy of check No. 45760 for \$130.00, two postcard receipts for the October 26, 2001 petition and the March 29, 2001 initial filing, and a letter from the United States Postal Office stating that Express Mail package EL574209483US was delivered to the addressee on March 30, 2001. The same Express Mail label number is found on the original application papers. The petition is supported by the declaration of Lori J. Giuffirda, who attests to the fact that she deposited the original application as Express Mail with the USPS on March 29, 2001. Ms. Giuffirda states that the papers submitted with the instant petition are copies of the original application papers.

Paragraph (e) of 37 CFR 1.10 states that:

Any person mailing correspondence addressed as set out in 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS, but not received by the Office, may petition the Commissioner to consider such correspondence as filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original

- mailing by "Express Mail";
- (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
 - (4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

While the "date-in" on petitioners' Express Mail mailing label is illegible, an independent search of the USPTO's USPS Express Mail Information Database revealed that Express Mail package EL574209483US was accepted by the USPS on March 29, 2001 at 6:21 pm. This information, considered in conjunction with the declaration of Lori J. Giuffrida, and the fact that the original application papers contain the Express Mail number EL574209483US affixed thereto, establishes to the satisfaction of the Commissioner that the application was deposited in Express Mail on March 29, 2001 prior to the last scheduled pickup.

Accordingly, the petition is granted.

Petitioners' checks, check no. 042843 for \$750.00 and check No. 45760 for \$130.00, cannot be located. Pursuant to petitioners' authorization, deposit account No. 19-4516 will be charged the \$710.00 filing fee and the \$40.00 recordation of assignment fee. No fee has been or will be charged for the filing of the instant petition.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of **March 29, 2001**.

Thereafter, the application will be forwarded to the appropriate Technology Center for examination in due course.

Any inquiries related to this decision should be directed to the undersigned at (703) 308-6712.

A handwritten signature in cursive script, appearing to read "E. Shirene Willis".

E. Shirene Willis
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy